

**No. 9(1)81-6Lab-14323.** In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Usha Spinning and Weaving Mills Ltd., Mathura Road, Faridabad:-

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING  
OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 84 of 1979

*between*

SHRI V. KARUNAKARAN, WORKMAN AND THE MANAGEMENT  
OF M/S. USHA SPINNING AND WEAVING MILLS LIMITED, MATHURA  
ROAD, FARIDABAD

*Present -*

Shri Sagar Ram Gupta, for the workman.

Shri R. N. Rai, for the respondent management.

#### AWARD

This reference No. 84 of 1979 has been referred to this Court by the Hon'ble Governor of Haryana, - *vide* his order No. ID/FD/223-79/58209, dated 27th December, 1979, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri V. Karunakaran, workman and the management of M/s. Usha Spinning and Weaving Mills Limited, Mathura Road, Faridabad. The terms of the reference was :-

Whether the termination of service of Shri V. Karunakaran was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference, the notices were issued to the parties and the parties appeared and filed their pleadings. According to the demand notice and rejoinder, the case of the claimant is that he joined the respondent factory in Mercerising Department in 1969 as a jobber. After Holi Festival occasion when the workman came in the factory to resume his duty he was stopped at the gate without any reason. So the workman is entitled for reinstatement with full back wages and continuity of service. When the workman came after Holi Festival Holidays he was told that the company was under lock-out. The workman visited the factory daily. The lockout was lifted on 10th April, 1979. After lifting the lockout the workman again visited the factory, but he was stopped by the gatekeeper saying that there is no order from the management to allow the Mercerise Department workers to enter in the factory. The workman ascertained this fact from the Personnel Manager, who also replied in same manner and told the workman that the management is not in a position to run the Mercerising Department for a few days. Then the workman regularly visited the factory as assured by the Personnel Manager, but I was told that still there is no settlement from the management to start Mercerising Department. The Personnel Department official threatened the workman that if he will come daily then they will hand over to the police which was at the gate on those days. On the threat of Personnel Department officials the workman went to the Conciliation Office for intervention. The respondent management came in the Conciliation Proceedings and stated before the workman that the management has closed the Mercerised Department due to loss. The Conciliation Officer asked them to give the proof for closure of the Department. After this the management did not appear in the Conciliation Office and the Conciliation Officer submitted his failure report to the Government.

The case of the respondent management according to the written statement is that due to shortage and subversive activities adopted by the workman, the management was constrained to declare the lockout on 13th March, 1979, and with the assurance of the Government the lockout was lifted on 10th April, 1979. After lifting the lockout the workman never reported for duties and remained absent. Under these circumstances, the management was left with no alternative except to consider that the workman abandoned the employment, therefore, his name was struck off from the muster roll.

On the pleadings of the parties, the following issues were framed :—

1. Whether the workman abandoned his service by absenting himself ? If so, to what effect ?
2. Whether the termination of service of the workman is proper, justified and in order ? If not, to what, relief is he entitled ?

My finding issue-wise is as under :—

#### Issue No. 1 :

On this issue the representative of the management argued that there was a trouble in the factory and violence took place by the workmen of the factory. The company declared lockout on 13th March, 1979 which was lifted on 10th April, 1979 after the assurance of the Government. After lifting the lockout, the workman never came for duty after that date as stated by the respondent witness as MW-1 Shri Amrish Kumar Goel. The witness has stated in his statement that the workman did not intimate the company by verbal or in writing for his absence from 9th April, 1979. Ex. M-1 is the copy of the notice which was displayed on the notice board at the time of lockout. Ex. M-2 to M-4 are the newspaper report of above said lockout. The notice of lifting of lockout was also displayed on the Notice Board. The lockout lifting information was also sent to the newspaper which is Ex. M-5 to M-9. The representative of the management further argued that even after this new items the workman did not come in the factory to resume his duties and he was marked absent as shown in Ex. M-10. The extract of attendance register upto 31st July, 1979 and his name was struck off from the roll after that date according to the Certified Standing Order which is Ex. M-11. The workman was working in the Mercerised Department along with 35 other workmen. The witness MW-1 has stated in his statement that 90% of the persons have taken their full and final settlement of their account and the management has not terminated their services on any account. The name of the workman was struck off from the roll according to Certified Standing Orders of the company. So the workman abandoned his services according to standing orders of the company which is Ex. M-11 and it is not a case of termination.

The representative of the workman argued on this issue that the orders are not according to the Certified Standing Orders of the company because according to Certified Standing Orders of the company the respondent should have struck off the name of the workman on 18th April, 1979 which they struck off on 31st July, 1979 after long time which is not prescribed in the standing orders. They maintained the name of the workman upto 31st July, 1979 but the respondent did not send any letter or intimation of lockout to the workman. The question is why the respondent maintained the name of the workman in the record upto 31st July, 1979 when the workman was absent. It was the duty of the respondent to send some letter to the workman for calling his explanation for his absence or for calling for resuming his duty. The respondent has failed in his duties. According to the arguments put by the respondent that the Mercerised Department was closed, is wrong. The workman was working with the company since 1969 as committed by the respondent witness MW-1 in his cross-examination. The witness has also submitted that no notice was given to the workman for absenting himself or he should join his duties, otherwise his name will be struck off. It is also admitted in his cross-examination that we neither paid nor sent retrenchment compensation or one month of notice pay while striking off his name. He further admitted in cross-examination that the workman has intimate for striking of his name. There is absent shown in the register from 10th April, 1979 to 31st July, 1979 and did not strike off the name of

the workman after 8 days' absent as provided in the Standing Orders. The witness N.W-1 has also accept the story of the workman that the Personnel Officer Shri M.S. Bakshi left his services in the month of May, 1979 who told and assured the workman when he visited the factory after the lock out was lifted. The witness has further admitted that the department is not closed and it started its working after 8 or 10 months after lifting the lockout. The representative of the workman argued that by this admission of the witness of the respondent management, it is clear that Mercerised Department was not working after the lockout and the Personnel Officer Shri M.S. Bakshi told him in right way. The respondent witness in his examination-in-chief has stated that 90% persons of the Mercerised Department took their full and final settlement after lifting the lockout and in his cross-examination he has admitted that the Mercerised Department started working after 10 months of lifting the lock out. Even after the starting of the Mercerised Department by the respondent company, the respondent has failed to call the workman on duty. So it is not a case of striking of the name by absenting the workman from duty according to standing orders of the company, but it is a termination and without any compensation to an old employee who was working with the company since 1969. The respondent has failed in his duties as argued above to inform the workman about their actions. So the case is not of abandonment of service of the workman, but of the termination.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that the arguments put forward by the representative of the workman has some force to be relied upon. It is the duty of the respondent to intimate the workman of his not coming on duties. Even though they kept the name of the workman on roll upto 31st July, 1979 so it is not a case of abandonment of service by the workman but it is termination of the workman. So this issue is decided in favour of the workman and against the respondent.

#### Issue No. 2 :

Issue No. 2 is as per reference. The representative of the respondent argued that the management has rightly struck off the name of the workman according to the standing orders of the company and he is not entitled to any relief. The management is justified in striking off the name of the workman from roll after workman absented himself from duties without intimation in writing to the management. So the management is justified in its decision.

The representative of the workman argued that the workman was in the employment of the company since 1969 and a permanent employee, who came after Holi festival and was not allowed to resume his duties in the factory without any reason. The respondent witness as admitted in his statement as MW-1 that no letter for any information was sent to the workman about his absence from duties though his name was kept upto 31st July, 1979. The story put forward by the workman in his statement as WW-1 is believable because from the very beginning in his demand notice and rejoinder he has stated the same story which is corroborated even by the respondent's witness MW-1. So dis-allowing the workman to work in the factory, who is a permanent employee, is not justified and proper. In view of the above arguments I am of the opinion even after deciding the issue No. 1 that the termination of the workman is not justified and proper and the workman is entitled for re-instatement with continuity of service and with full back wages. No order as to cost.

This be read as an answer to this reference.

Dated the 22nd November, 1981

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endstt. No. 3309, dated the 27th November, 1981

Forwarded (four copies) to the Commissioner, & Secretary to Government, Haryana, Labour & Employment Deptt., Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.